

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 216 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO  
1 to 5 No

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BALKRISHNA I PATEL

Versus

PROMOTER OF PROPOSED SARASWAT CO. OP. HO. SOC. LTD.  
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Appearance:

MR SR SHAH for Petitioners  
MR MC SHAH for Respondent No. 1, 2  
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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 09/08/2000

ORAL JUDGEMENT

1. ADMIT. The learned counsel appearing for the  
respondents on caveat waives service of Notice.

2. The appellants are the original plaintiffs in

Special Civil Suit No.52 of 2000 pending before the learned Joint Civil Judge (S.D.), Anand and they have approached this Court by this appeal to challenge the order made below their application at Ex.5. By the impugned order, the application seeking injunction against the respondents has been rejected on the grounds that the appellants are already refunded their credit amount back and, therefore, they did not stand to suffer any irreparable loss as the membership agreement of the society promoted by the respondents was duly terminated after sufficient opportunities. The trial Court has also taken note of the fact that the members who have been subsequently allotted the suit plots and who are put into possession of the same were not joined as parties and they may have to suffer irreparable loss if the interim injunction were to be granted.

3. The learned counsel appearing for the appellants has vehemently argued on the issue of possession of the plots in question and submitted that, insofar as the construction was put up by the appellants, it should be believed that they were in actual and physical possession of the plots. It is further submitted that, by their own admission the respondents have by a mere resolution reallocated the plots to other members and such allotment of plots was illegal and not amounting to actual transfer of possession also.

4. A detailed affidavit-in-reply has been filed on behalf of the respondents and it is reiterated that the plots in question are already allotted to the new members alongwith construction thereon and such new allottees, who are not parties in this proceedings, are in possession of the plots and putting up further constructions. However, it is also conceded that the present respondents Nos.1 and 2 do not propose to put up any construction on the plots which were formerly allotted to the appellants. It is further conceded by the learned counsel for the respondents that they will not disturb the possession of any of the parties who may be in actual possession of the plots in question.

5. On the basis of the concession and statement made on behalf of the respondents, the learned counsel for the appellants submits that this statement being a part of this order, the appellants do not press for any other relief. Accordingly, recording the statement on behalf of the respondents as above as a part of this order, the appeal stands disposed with no order as to costs.

(KMG Thilake)

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